

AMENDMENTS TO DRAWING FIGURES:

New formal drawing replacement sheets are submitted herewith. Additionally, "bottles" have been added and now are properly illustrated in Fig. 1. Minor typographical errors also have been corrected, with the excess lead lines deleted from Fig. 2 and the numerals 4 and 5 have been added with appropriate lead lines. An arrow also was added to Fig. 8 to illustrate the insertion direction.

REMARKS

The Examiner objected to the drawings for not showing the claimed "bottles". Replacement sheets are submitted herewith with the "bottles" now properly illustrated in Fig. 1. Minor typographical errors also have been corrected, with the excess lead lines deleted from Fig. 2 and the numerals 4 and 5 have been added with appropriate lead lines. An arrow also was added to Fig. 8 to illustrate the insertion direction. The drawing objection now should be obviated.

The Examiner rejected Claims 1-4, 6 and 9-11 under 35 U.S.C. § 103(a) as being obvious over Harbison, U.S. Patent No. 2,294,749 (hereinafter "Harbison '749") in view of Anderson, U.S. Patent No. 5,167,903 (hereinafter "Anderson '903"). The Examiner states that Harbison '749, a refrigerator cabinet, shows the claimed invention except for the "releaseably mounted" rods. Harbison '749 does indeed not show or suggest "releaseably mounted" rods, since the rods or spaced apart members 26 are wires "secured to the frame by welding, soldering or the like". Clearly Harbison '749 makes no suggestion of the claimed "releaseably mounted" rods.

The Examiner then states that the "releaseably mounted" rods are shown by Anderson '903 directed to an apparatus for supporting a work piece on a water table.

The so-called "releaseably mounted" rods are support bars for supporting the lower surface of a metal plate which is to be cut into one or more parts. The Examiner then states

"it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the drawer or Harbison so as to employ "removable" rods as taught by Anderson because this arrangement would provide Harbison with the opportunity to rearrange the bar configuration on the drawer so as to suit the particular needs of the user or enhance the supporting capacity for irregularly shaped items carried by the drawer."

A critical step in analyzing the patentability of claims pursuant to 35 U.S.C. § 103 is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. See *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher." *Id.* (quoting *W.L. Gore & Assocs. Inc.*

v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 313 (Fed. Cir. 1983)).

Most if not all inventions arise from a combination of old elements. See *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998). Thus, every element of a claimed invention may often be found in the prior art. See *id.* However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. See *id.* Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, **there must be some motivation, suggestion, or teaching of the desirability of making the specific combination that was made by the applicant.** See *In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 163.5, 1637 (Fed. Cir. 1998); *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

Therefore, to make such a drastic modification to Harbison '749 -- as suggested by the Examiner-- there must be some motivation to do so.

The motivation, suggestion, or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved. See *Dembiczak*, 175 F.3d at 999, 50 USPQ2d at 1617. In addition, the teaching, motivation, or suggestion may be implicit from the prior

art as a whole, rather than expressly stated in the references. See *WMS Gaming, Inc. v. International Game Tech.*, 184 F.3d 1339, 1355, 51 USPQ2d 1385, 1397 (Fed. Cir. 1999). The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981) (and cases cited therein). Whether an Examiner relies on an express or an implicit showing, **the Examiner must provide particular findings related thereto.** See *Dembiczak*, 175 F.3d at 999, 50 USPQ2d at 1617. Broad conclusory statements standing alone **are not "evidence."** *Id.* When an Examiner relies on general knowledge to negate patentability, **that knowledge must be articulated and placed on the record.** See *In re Lee*, 277 F-3d 1338, 1342-45, 61 USPQ2d 1430, 1433-35 (Fed. Cir. 2002).

The Examiner has provided no support or reason at all why Harbison '749 would be modified using the features disclosed by Anderson '903 other than "[i]t would have been obvious." Applicants respectfully believe that Harbison '749, itself, discloses otherwise and entirely prevents reaching such a conclusion, since the rods are welded into one fixed position.

Simply put, the Examiner believes that the teaching of Anderson '903 would motivate someone to change the fixed rods of Harbison '749 into the claimed "releaseably mounted" rods. However, Harbison '749 only discloses one type of fixed rod and no suggestion or motivation to make the rods adjustable or movable for any reason. Harbison '749 especially does not teach or suggest "releaseably mounted" rods. So, one having ordinary skill in the art would not try to use the totally unrelated art of Anderson '903 to make such a change.

Upon evaluation of the Office Action and the cited prior art, Applicants respectfully believe that the evidence adduced is insufficient to establish a *prima facie* case of obviousness with respect to Claims 1-4, 6 and 9-11. Accordingly, the rejection of Claims 1-4, 6 and 9-11 should be withdrawn.

Claim 5 is dependent upon allowable Claim 1 and should also be allowable.

The Examiner further rejected Claims 1-4, 6 and 9-11 under 35 U.S.C. § 103(a) as being obvious over Tattershall, U.S. Patent No. 4,138,175 (hereinafter "Tattershall '175") also in view of Anderson '903. This rejection falls for the same reason as that expressed above for the first rejection of Claims 1-4, 6 and 9-11 over Harbison '749 in view of Anderson '903. The motivation or teaching of the

"releaseably mounted" rods is also not shown by this combination of references and again Claims 1-4, 6 and 9-11 are allowable thereover.

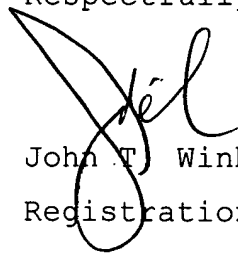
The Examiner indicated that Claims 7 and 8 would be allowable if filed in independent form. The Examiner is thanked for the indication of allowability and new 12 has been added which is a combination of Claims 1, 6 and 7. New Claim 13, equivalent to present Claim 8 is also added dependent from Claim 12 and also should be allowable.

If the Examiner has any questions regarding this amendment, the Examiner is requested to contact the undersigned.

John T. Winburn

Name of Attorney Signing under
37 CFR 1.34

Respectfully submitted

A handwritten signature in black ink, appearing to read "John T. Winburn", is written over the printed name and registration number.

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